

Senate File 2262 - Introduced

SENATE FILE 2262
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2166)

A BILL FOR

1 An Act relating to forfeiture of property for criminal
2 offenses.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **809B.1 Definitions.**

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Abandoned property*" means personal property left by an
5 owner who intentionally relinquishes all rights to the control
6 of the personal property. "*Abandoned property*" does not include
7 real property.

8 2. "*Actual knowledge*" means direct and clear awareness of
9 information, a fact, or a condition.

10 3. "*Constructive knowledge*" means knowledge that is
11 imputed to family or household members of the defendant if the
12 defendant admitted guilt or was adjudicated guilty three or
13 more times for the same or similar offense, as specified in
14 statute, in the ten years prior to the alleged offense.

15 4. "*Contraband*" means goods that are unlawful to import,
16 export, or possess, including controlled substances without a
17 valid prescription.

18 5. "*Conveyance*" means a device used for transportation and
19 includes a motor vehicle, trailer, snowmobile, airplane, and
20 vessel, and any attached equipment. "*Conveyance*" does not
21 include property that is stolen or taken in violation of the
22 law.

23 6. "*Instrumentality*" means property otherwise lawful to
24 possess that is used in the furtherance or commission of an
25 offense of a law subject to forfeiture. "*Instrumentality*"
26 includes land, buildings, containers, a conveyance, equipment,
27 materials, products, a computer, computer software, a
28 telecommunications device, a firearm, ammunition, a tool,
29 money, securities, and negotiable instruments and other means
30 of exchange.

31 7. "*Law enforcement agency*" means any nonfederal police
32 force, or other local, county, or state agency that has the
33 authority under state law to engage in seizure and forfeiture.

34 8. "*Law subject to forfeiture*" means a state law that
35 carries a felony penalty and that explicitly includes

1 forfeiture as a punishment or sanction for the offense.

2 Sec. 2. NEW SECTION. **809B.2 Purpose.**

3 This chapter's purpose is to deter criminal activity by
4 reducing crime's economic incentive, increase the pecuniary
5 loss from criminal activity, protect against the wrongful
6 forfeiture of property, and ensure that only criminal
7 forfeiture is allowed in this state.

8 Sec. 3. NEW SECTION. **809B.3 Criminal forfeiture — property**
9 **subject to forfeiture.**

10 When a person is convicted of violating a law subject to
11 forfeiture, the court, consistent with this chapter, may order
12 the person to forfeit any of the following:

13 1. Property the person derived from the commission of the
14 offense.

15 2. Property directly traceable to property derived from the
16 commission of the offense.

17 3. Instrumentalities the person used in the commission of
18 the offense.

19 Sec. 4. NEW SECTION. **809B.4 Exemptions.**

20 Real property that is a homestead, a motor vehicle of less
21 than ten thousand dollars in market value, and United States
22 currency totaling two hundred dollars or less are exempt from
23 forfeiture.

24 Sec. 5. NEW SECTION. **809B.5 Contraband.**

25 A property right does not exist in contraband. Contraband
26 is subject to seizure and shall be disposed of according to
27 state law. Contraband is not subject to forfeiture under this
28 chapter.

29 Sec. 6. NEW SECTION. **809B.6 Conviction required — standard**
30 **of proof.**

31 1. Property may only be forfeited under this chapter if the
32 offense is of a state law subject to forfeiture, the offense is
33 established by proof of a criminal conviction, and the state
34 establishes that the property is forfeitable under this chapter
35 by clear and convincing evidence.

1 2. This chapter does not prevent property from being
2 forfeited by plea agreement approved by the presiding criminal
3 court.

4 3. *a.* The court may waive the requirement of proof of a
5 criminal conviction if the prosecuting authority shows by a
6 preponderance of the evidence any of the following:

7 (1) The suspect died.

8 (2) The suspect was deported by the United States
9 government.

10 (3) The suspect fled the jurisdiction after being arrested,
11 charged with a crime subject to forfeiture of property, and
12 released on bail.

13 *b.* Property forfeitable under this subsection remains
14 subject to claims by innocent owners, creditors, and other
15 third parties pursuant to this chapter.

16 Sec. 7. NEW SECTION. **809B.7 Substitution of assets.**

17 Upon the state's motion following conviction, the court
18 may order the forfeiture of substitute property owned by the
19 defendant up to the value of unreachable property that is
20 beyond the court's jurisdiction or cannot be located through
21 due diligence only if the state proves by a preponderance of
22 the evidence that the defendant intentionally transferred,
23 sold, or deposited property with a third party to avoid the
24 court's jurisdiction.

25 Sec. 8. NEW SECTION. **809B.8 No additional remedies.**

26 The state shall not seek personal money judgments or other
27 remedies not provided for in this chapter.

28 Sec. 9. NEW SECTION. **809B.9 No joint-and-several liability.**

29 A defendant is not jointly and severally liable for
30 forfeiture awards owed by other defendants. When ownership is
31 unclear, a court may order each defendant to forfeit property
32 on a pro rata basis or by another means the court finds
33 equitable.

34 Sec. 10. NEW SECTION. **809B.10 Seizure of personal property**
35 **with process.**

1 At the request of the state at any time, a court may issue an
2 ex parte preliminary order to attach, seize, or secure personal
3 property for which forfeiture is sought and to provide for
4 custody of such property. Application, issuance, execution,
5 and return are subject to this Code statute or court rules.

6 Sec. 11. NEW SECTION. 809B.11 Seizure of personal property
7 without process.

8 Personal property subject to forfeiture may be seized at any
9 time without a court order if any of the following apply:

10 1. The seizure of personal property is incident to a lawful
11 arrest or a search lawfully conducted.

12 2. The personal property subject to seizure has been the
13 subject of a prior judgment in favor of the state.

14 3. The state has probable cause to believe that the delay
15 occasioned by the necessity to obtain process would result in
16 the removal or destruction of the personal property and that
17 the personal property is forfeitable under this chapter.

18 Sec. 12. NEW SECTION. 809B.12 Seizure of real property with
19 process.

20 1. Seizure of real property requires a court order. A court
21 may issue an order to seize or secure real property for which
22 forfeiture is sought only after proper notice to the property
23 owner and an opportunity for a contested hearing to determine
24 the sufficiency of probable cause for the seizure.

25 2. This section does not prohibit the prosecuting authority
26 from seeking a lis pendens or restraining order to hinder the
27 sale or destruction of the real property.

28 3. Application, issuance, execution, and return of any
29 order are subject to this Code or court rules.

30 Sec. 13. NEW SECTION. 809B.13 Receipt.

31 When property is seized, the law enforcement officer shall
32 give an itemized receipt to the person possessing the property,
33 or in the absence of a person, leave a receipt in the place
34 where the property was found, if reasonably possible.

35 Sec. 14. NEW SECTION. 809B.14 Title.

1 1. At the time of seizure or entry of a restraining order,
2 the state acquires provisional title to the seized property.
3 Provisional title authorizes the state to hold and protect the
4 property.

5 2. Title to the property vests with the state when the trier
6 of fact renders a final forfeiture verdict and relates back to
7 the time when the state acquired provisional title. However,
8 this title is subject to claims by third parties adjudicated
9 under this chapter.

10 Sec. 15. NEW SECTION. **809B.15 Pretrial replevin hearing.**

11 1. Following the seizure of property, a defendant or
12 claimant has a right to a pretrial hearing to determine the
13 validity of the seizure.

14 2. The defendant or claimant may claim at any time prior
15 to sixty days before trial of the related criminal offense the
16 right to possession of property by motion to the court to issue
17 a writ of replevin.

18 3. The defendant or claimant shall file a motion
19 establishing the validity of the alleged interest in the
20 property.

21 4. The court shall hear the motion no more than thirty days
22 after the motion is filed.

23 5. The state shall file an answer showing probable cause
24 for the seizure, or cross motions at least ten days before the
25 hearing.

26 6. Either party may, by agreement or for good cause,
27 move the court to delay the hearing for one extension of no
28 more than ten days. Any such motion may be supported by an
29 affidavit or other submission.

30 7. The court shall grant the motion if the court finds that
31 any of the following apply:

32 a. The final judgment will likely be that the state must
33 return the property to the claimant.

34 b. The property is not reasonably required to be held for
35 investigatory reasons.

1 *c.* The property is the only reasonable means for a defendant
2 to pay for legal representation in the forfeiture or criminal
3 proceeding. At the court's discretion under paragraph "b", the
4 court may order the return of funds or property sufficient to
5 obtain legal counsel but less than the total amount seized, and
6 require an accounting.

7 8. In lieu of ordering the issuance of the writ, the court
8 may order the state to give security or written assurance for
9 satisfaction of any judgment, including damages, that may be
10 rendered in the action, or order other relief as may be just.

11 Sec. 16. NEW SECTION. 809B.16 **Discovery.**

12 Discovery is subject to the rules of criminal procedure.

13 Sec. 17. NEW SECTION. 809B.17 **Trial proceedings.**

14 The litigation related to the forfeiture of property shall
15 be held in a single proceeding following the trial of the
16 related alleged criminal offense. The litigation of whether
17 property of less than ten thousand dollars in value shall be
18 forfeited shall be held before only a judge.

19 Sec. 18. NEW SECTION. 809B.18 **Proportionality hearing.**

20 1. At any time following determination by the trier of fact,
21 the defendant may petition the court to determine whether the
22 forfeiture is unconstitutionally excessive under the state or
23 federal constitution.

24 2. The defendant has the burden of establishing the
25 forfeiture is grossly disproportional to the seriousness of
26 the offense by a preponderance of the evidence at a hearing
27 conducted by the court without a jury.

28 3. In determining whether the forfeiture of an
29 instrumentality is unconstitutionally excessive, the court may
30 consider all relevant factors, including but not limited to all
31 of the following:

32 *a.* The seriousness of the offense and the offense's impact
33 on the community, including the duration of the activity and
34 the harm caused by the defendant.

35 *b.* The extent to which the defendant participated in the

1 offense.

2 *c.* The extent to which the property was used in committing
3 the offense.

4 *d.* The sentence imposed for committing the offense subject
5 to forfeiture.

6 *e.* Whether the offense was completed or attempted.

7 4. In determining the value of the instrumentality subject
8 to forfeiture, the court may consider relevant factors,
9 including but not limited to any of the following:

10 *a.* The fair market value of the property.

11 *b.* The value of the property to the defendant including
12 hardship to the defendant if the forfeiture is realized.

13 *c.* The hardship from the loss of a motor vehicle or other
14 property to the defendant's family members or others if the
15 property is forfeited.

16 5. The court shall not consider the value of the
17 instrumentality to the state in determining whether the
18 forfeiture of an instrumentality is constitutionally excessive.

19 Sec. 19. NEW SECTION. **809B.19 Secured interest.**

20 1. Property encumbered by a valid security interest or
21 subject to a lease or rental agreement is not subject to
22 forfeiture. A person claiming a security interest must
23 establish by a preponderance of the evidence the validity
24 of the perfected security interest, a lease, or a rental
25 agreement.

26 2. The prosecuting authority shall summarily return
27 property to the person with a valid security interest in the
28 property, to the lessor, or to the person who is renting out
29 the property.

30 3. If the person alleges a valid security interest or that
31 the property is subject to a lease or rental agreement but
32 the state seeks to proceed with the forfeiture against the
33 property, the state shall prove by a preponderance of the
34 evidence that the person had actual knowledge of the underlying
35 offense giving rise to the forfeiture.

1 Sec. 20. NEW SECTION. **809B.20 Innocent owner.**

2 1. The property of an innocent owner shall not be forfeited.
3 Whether a person is an innocent owner shall be determined in
4 accordance with this section.

5 2. A person who has an ownership interest in property
6 subject to forfeiture existing at the time the illegal conduct
7 giving rise to forfeiture occurred and who claims to be an
8 innocent owner has the burden of proving by a preponderance
9 of the evidence that the person has a legal right, title, or
10 interest in the property seized under this chapter.

11 3. If subsection 2 is satisfied and the state seeks to
12 proceed with the forfeiture against the property, the state
13 shall prove by a preponderance of the evidence that the person
14 had actual or constructive knowledge of the underlying offense
15 giving rise to the forfeiture.

16 4. A person who acquired an ownership interest in property
17 subject to forfeiture after the commission of an offense giving
18 rise to the forfeiture and who claims to be an innocent owner
19 has the burden of proving by a preponderance of the evidence
20 that the person has legal right, title, or interest in the
21 property seized under this chapter.

22 5. If subsection 4 is satisfied and the state seeks to
23 proceed with the forfeiture against the property, the state
24 shall prove by a preponderance of the evidence that at the time
25 the person acquired the property any of the following applied:

26 a. The person had actual or constructive knowledge that the
27 property was subject to forfeiture.

28 b. The person was not a bona fide purchaser without notice
29 of any defect in title and for valuable consideration.

30 6. If the state fails to meet the state's burden in
31 subsection 3 or 5, the court shall find that the person is an
32 innocent owner and shall order the state to relinquish all
33 claims of title to the property.

34 7. The suspect or convicted offender may invoke the right
35 against self-incrimination or the marital privilege during

1 the forfeiture-related stage of the prosecution. The trier
2 of fact at the hearing may draw an adverse inference from the
3 invocation of the right or privilege.

4 Sec. 21. NEW SECTION. **809B.21 Appeal.**

5 A party to forfeiture litigation may appeal the district
6 court's decision regarding the seizure, forfeiture, and
7 distribution of property under this chapter.

8 Sec. 22. NEW SECTION. **809B.22 Disposition of property and
9 proceeds.**

10 1. At any time when unclaimed property or contraband held
11 for evidentiary purposes is no longer needed for that purpose,
12 the court may order unclaimed property to be delivered to the
13 treasurer of state within thirty days, or, in the case of
14 contraband, be destroyed within thirty days.

15 2. If the forfeiture is granted, the court may order the
16 property be delivered to the treasurer of state within thirty
17 days.

18 3. Upon motion, the court may order that a portion of the
19 currency seized or proceeds from public auction be used to pay
20 reasonable nonpersonnel expenses of the seizure, storage, and
21 maintenance of custody of any forfeited items.

22 4. All abandoned property shall be delivered to the
23 treasurer of state within thirty days.

24 5. The treasurer of state shall dispose of all noncurrency
25 forfeited property at public auction. The auction proceeds and
26 forfeited currency shall first be used to pay all outstanding
27 recorded liens on the forfeited property, then to comply with
28 an order of the court to pay reasonable nonpersonnel expenses,
29 with all remaining funds to be deposited in the general fund
30 of the state.

31 Sec. 23. NEW SECTION. **809B.23 Prohibition on retaining
32 property — sale restrictions.**

33 A law enforcement agency shall not retain forfeited property
34 or sell forfeited property directly or indirectly to any
35 employee of the agency, to a person related by consanguinity or

1 affinity to an employee of the agency within the third degree,
2 or to another law enforcement agency.

3 Sec. 24. NEW SECTION. **809B.24 Reporting.**

4 1. On an annual basis, each law enforcement agency shall
5 report to the department of revenue the following information
6 about seizures and forfeitures completed by the law enforcement
7 agency under state forfeiture law and federal forfeiture law:

8 a. The total number of seizures of currency.

9 b. The total number of seizures and the number of items in
10 each class of property seized including vehicles, houses, and
11 other types of property.

12 c. The market value of each class of property seized
13 including currency, vehicles, houses, and other types of
14 property.

15 d. The total number of occurrences of each class of offense
16 underlying the forfeitures including controlled substances,
17 driving while intoxicated, and other offenses.

18 2. The department of revenue may require that information
19 not specified in this section also be reported. The department
20 of revenue shall develop standard forms, processes, and
21 deadlines for electronic data entry for annual submission of
22 forfeiture data by law enforcement agencies.

23 3. Each law enforcement agency shall file with the
24 department of revenue the report required under subsection
25 1 for the law enforcement agency and the corresponding
26 prosecutor's office. The law enforcement agency shall
27 file separate reports for forfeitures completed under state
28 forfeiture law and federal forfeiture law. A report shall be
29 filed by a law enforcement agency even if the law enforcement
30 agency did not engage in seizures or forfeitures during the
31 reporting period. The department of revenue shall compile the
32 submissions and issue an aggregate report of all forfeitures
33 in the state.

34 4. By April 1 of each year, the department of revenue shall
35 make available on the department's internet site the reports

1 submitted by law enforcement agencies and the aggregate report
2 prepared by the department under subsection 3.

3 Sec. 25. NEW SECTION. **809B.25 Return of property, damages,**
4 **and costs.**

5 1. The law enforcement agency that holds the property shall
6 return property to the owner within a reasonable period of time
7 not to exceed five days after any of the following:

8 a. The court finds that the owner has a bona fide security
9 interest.

10 b. The court finds that the owner is an innocent owner.

11 c. The owner's acquittal of or the dismissal of the criminal
12 charge that is the basis of the forfeiture proceedings.

13 d. The disposal of the criminal charge that is the basis of
14 the forfeiture proceedings by nolle prosequi.

15 2. The law enforcement agency that holds the property is
16 responsible for any damages, storage fees, and related costs
17 applicable to property returned under subsection 1.

18 Sec. 26. NEW SECTION. **809B.26 Transfer of forfeitable**
19 **property to federal government.**

20 A law enforcement agency, joint taskforce of any kind,
21 or prosecuting authority shall not directly or indirectly
22 transfer or refer seized property to any federal agency unless
23 the seized property includes seized United States currency in
24 excess of fifty thousand dollars.

25 Sec. 27. NEW SECTION. **809B.27 Preemption.**

26 This chapter preempts laws by county, city, township, and
27 other tribal or local governments in the state which regulate
28 civil and criminal forfeiture.

29 Sec. 28. Section 80.39, subsection 1, Code 2016, is amended
30 to read as follows:

31 1. Personal property, except for motor vehicles subject to
32 sale pursuant to [section 321.89](#), and seizable property subject
33 to disposition pursuant to [chapter 809](#) ~~or 809A~~, which personal
34 property is found or seized by, turned in to, or otherwise
35 lawfully comes into the possession of the department or a local

1 law enforcement agency and which the department or agency does
2 not own, shall be disposed of pursuant to [this section](#). If by
3 examining the property the owner or lawful custodian of the
4 property is known or can be readily ascertained, the department
5 or agency shall notify the owner or custodian by certified mail
6 directed to the owner's or custodian's last known address, as
7 to the location of the property. If the identity or address of
8 the owner cannot be determined, notice by one publication in a
9 newspaper of general circulation in the area where the property
10 was found is sufficient notice. A published notice may contain
11 multiple items.

12 Sec. 29. Section 123.9, subsection 7, Code 2016, is amended
13 by striking the subsection.

14 Sec. 30. Section 321.232, subsection 3, Code 2016, is
15 amended to read as follows:

16 3. A speed detection jamming device sold, operated, or
17 possessed in violation of [subsection 1](#) may be seized by a peace
18 officer and is subject to forfeiture as provided by [chapter 809](#)
19 ~~or [809A](#)~~.

20 Sec. 31. Section 321J.4B, subsections 6, 9, and 10, Code
21 2016, are amended to read as follows:

22 6. Upon conviction of the defendant for a second
23 or subsequent violation of [subsection 2](#), paragraph "a",
24 subparagraph (2), the court shall order, if the convicted
25 person is the owner of the motor vehicle used in the commission
26 of the offense, that that motor vehicle be seized and forfeited
27 to the state pursuant to [chapters 809](#) and ~~[809A](#)~~ [809B](#).

28 9. Operating a motor vehicle on a street or highway in this
29 state in violation of an order of impoundment or immobilization
30 is a serious misdemeanor. A motor vehicle which is subject to
31 an order of impoundment or immobilization that is operated on a
32 street or highway in this state in violation of the order shall
33 be seized and forfeited to the state under [chapters 809](#) and
34 ~~[809A](#)~~ [809B](#).

35 10. Once the period of impoundment or immobilization has

1 expired, the owner of the motor vehicle shall have thirty
2 days to claim the motor vehicle and pay all fees and charges
3 imposed under [this section](#). If the owner or the owner's
4 designee has not claimed the vehicle and paid all fees and
5 charges imposed under [this section](#) within seven days from the
6 date of expiration of the period, the clerk shall send written
7 notification to the motor vehicle owner, at the owner's last
8 known address, notifying the owner of the date of expiration of
9 the period of impoundment or immobilization and of the period
10 in which the motor vehicle must be claimed. If the motor
11 vehicle owner fails to claim the motor vehicle and pay all fees
12 and charges imposed within the thirty-day period, the motor
13 vehicle shall be forfeited to the state under [chapters 809](#) and
14 [809A 809B](#).

15 Sec. 32. Section 321J.4B, subsection 12, paragraph a,
16 subparagraph (2), Code 2016, is amended to read as follows:

17 (2) The holder of a security interest in a vehicle which
18 is impounded or immobilized pursuant to [this section](#) or
19 forfeited in the manner provided in [chapters 809](#) and [809A](#)
20 [809B](#) shall be notified of the impoundment, immobilization,
21 or forfeiture within seventy-two hours of the seizure of the
22 vehicle and shall have the right to claim the motor vehicle
23 without payment of any fees or surcharges unless the value of
24 the vehicle exceeds the value of the security interest held by
25 the creditor.

26 Sec. 33. Section 321J.10, subsection 7, Code 2016, is
27 amended to read as follows:

28 7. Specimens obtained pursuant to warrants issued under
29 this section are not subject to disposition under [section 808.9](#)
30 or [chapter 809](#) or [809A 809B](#).

31 Sec. 34. Section 455B.103, subsection 4, paragraph d,
32 subparagraph (2), Code 2016, is amended to read as follows:

33 (2) In a reasonable manner, and any property seized shall be
34 treated in accordance with the provisions of [chapters 808, 809,](#)
35 and [809A 809B](#).

1 Sec. 35. Section 462A.14D, subsection 7, Code 2016, is
2 amended to read as follows:

3 7. Specimens obtained pursuant to warrants issued under
4 this section are not subject to disposition under [section 808.9](#)
5 or [chapter 809](#) or ~~809A~~ [809B](#).

6 Sec. 36. Section 706A.3, subsection 3, paragraphs d and e,
7 Code 2016, are amended to read as follows:

8 d. Ordering the payment of all reasonable costs and expenses
9 of the investigation and prosecution of any violation, civil
10 or criminal, including reasonable attorney fees in the trial
11 and appellate courts. Such payments received by the state,
12 by judgment, settlement, or otherwise, shall be considered
13 forfeited property and disposed of pursuant to ~~section 809A.17~~
14 [chapter 809B](#).

15 e. Ordering the forfeiture of any property subject to
16 forfeiture under ~~chapter 809A~~ [809B](#), pursuant to the provisions
17 and procedures of that chapter.

18 Sec. 37. Section 706A.3, subsection 4, Code 2016, is amended
19 to read as follows:

20 4. Relief under [subsection 3](#), paragraphs "e", "f", and
21 "g", shall not be granted in civil proceedings instituted
22 by an aggrieved person unless the prosecuting attorney has
23 instituted the proceedings or intervened. In any action under
24 this section brought by the state or in which the state has
25 intervened, the state may employ any of the powers of seizure
26 and restraint of property as are provided for forfeiture
27 actions under ~~chapter 809A~~ [809B](#), or as are provided for the
28 collection of taxes payable and past due, and whose collection
29 has been determined to be in jeopardy.

30 Sec. 38. Section 706B.2, subsection 4, Code 2016, is amended
31 to read as follows:

32 4. A person who is found guilty of a violation under this
33 section also may be charged with violations of [chapter 706A](#),
34 and property involved in a violation under [this chapter](#) is
35 subject to forfeiture under ~~chapter 809A~~ [809B](#).

1 Sec. 39. Section 715A.8, subsection 6, Code 2016, is amended
2 to read as follows:

3 6. Any real or personal property obtained by a person as
4 a result of a violation of [this section](#), including but not
5 limited to any money, interest, security, claim, contractual
6 right, or financial instrument that is in the possession of the
7 person, shall be subject to seizure and forfeiture pursuant to
8 chapter ~~809A~~ [809B](#). A victim injured by a violation of this
9 section, or a financial institution that has indemnified a
10 victim injured by a violation of [this section](#), may file a claim
11 as an interest holder pursuant to [section ~~809A.11~~ 809B.15](#) for
12 payment of damages suffered by the victim including costs of
13 recovery and reasonable attorney fees.

14 Sec. 40. Section 716A.7, Code 2016, is amended to read as
15 follows:

16 **716A.7 Forfeitures for violations of chapter.**

17 All property, including all income or proceeds earned but
18 not yet received from a third party as a result of a violation
19 of [this chapter](#), used in connection with a violation of this
20 chapter, known by the owner thereof to have been used in
21 violation of [this chapter](#), shall be subject to seizure and
22 forfeiture pursuant to [chapter ~~809A~~ 809B](#).

23 Sec. 41. Section 724.26, subsection 4, Code 2016, is amended
24 to read as follows:

25 4. Except as provided in ~~[section 809A.17, subsection 5,](#)~~
26 ~~paragraph "b"~~ [chapter 809B](#), a court that issues an order or
27 that enters a judgment of conviction described in subsection
28 2 and that finds the subject of the order or conviction to be
29 in possession of any firearm, offensive weapon, or ammunition
30 shall order that such firearm, offensive weapon, or ammunition
31 be sold or transferred by a date certain to the custody of a
32 qualified person in this state, as determined by the court.
33 The qualified person must be able to lawfully possess such
34 firearm, offensive weapon, or ammunition in this state. If
35 the court is unable to identify a qualified person to receive

1 such firearm, offensive weapon, or ammunition, the court
2 shall order that the firearm, offensive weapon, or ammunition
3 be transferred by a date certain to the county sheriff or
4 a local law enforcement agency designated by the court for
5 safekeeping until a qualified person is identified to receive
6 the firearm, offensive weapon, or ammunition, until such order
7 is no longer in effect, until such conviction is vacated, or
8 until the person's rights have been restored in accordance
9 with [section 724.27](#). If the firearm, offensive weapon, or
10 ammunition is to be transferred to the sheriff's office or a
11 local law enforcement agency, the court shall assess the person
12 the reasonable cost of storing the firearm, offensive weapon,
13 or ammunition, payable to the county sheriff or the local law
14 enforcement agency.

15 Sec. 42. Section 809.5, subsection 1, paragraph f,
16 subparagraph (1), Code 2016, is amended to read as follows:

17 (1) If the aggregate fair market value of the property is
18 greater than five hundred dollars, forfeiture proceedings shall
19 be initiated pursuant to the provisions of [chapter 809A 809B](#).
20 If the court does not order the property forfeited to the state
21 in the forfeiture proceedings pursuant to [chapter 809A 809B](#),
22 the seizing agency shall become the owner of the property and
23 may dispose of it in any reasonable manner.

24 Sec. 43. Section 809.12A, Code 2016, is amended to read as
25 follows:

26 **809.12A Appeals.**

27 An appeal from a denial of an application for the return
28 of seized property or from an order for the return of seized
29 property shall be made within thirty days after the entry of
30 a judgment order. The appellant, other than the state, shall
31 post a bond of a reasonable amount as the court may fix and
32 approve, conditioned to pay all costs of the proceedings if the
33 appellant is unsuccessful on appeal. The appellant, other than
34 the state, may be required to post a supersedeas bond or other
35 security, as the court finds to be reasonable, in order to stay

1 the operation of a forfeiture order under ~~section 809A.16~~
2 chapter 809B.

3 Sec. 44. Section 809.15, Code 2016, is amended to read as
4 follows:

5 **809.15 Combining proceedings.**

6 In cases involving seized property and property subject to
7 forfeiture pursuant to [section 809A.4](#) [809B.3](#), the court may
8 order that the proceedings be combined for purposes of this
9 chapter.

10 Sec. 45. REPEAL. Chapter 809A, Code 2016, is repealed.

11 EXPLANATION

12 The inclusion of this explanation does not constitute agreement with
13 the explanation's substance by the members of the general assembly.

14 This bill relates to criminal asset forfeiture.

15 Asset forfeiture is a process by which contraband and
16 proceeds or instrumentalities related to criminal activity
17 may be seized by the state and sold. Under current law,
18 asset forfeiture is governed by Code chapter 809A. The bill
19 repeals Code chapter 809A and replaces it with new Code chapter
20 809B. Currently under Code chapter 809A, a conviction for a
21 criminal offense is not required for an asset to be subject to
22 forfeiture, and forfeiture need not be expressly authorized
23 as a penalty in the criminal statute. The bill provides that
24 property is not subject to forfeiture until a person has
25 been convicted of a felony for which forfeiture is expressly
26 authorized as a penalty.

27 The bill exempts homestead real property, motor vehicles of
28 less than \$10,000 in market value, and United States currency
29 totaling \$200 or less from forfeiture.

30 Current law requires the state to prove that property is
31 subject to forfeiture by a preponderance of the evidence. The
32 bill requires the state to prove, by clear and convincing
33 evidence, that the property is forfeitable.

34 The bill provides that a defendant is not jointly and
35 severally liable for forfeiture awards owed by other

1 defendants.

2 The bill provides for a proportionality hearing, where
3 the defendant may petition the court that the forfeiture is
4 unconstitutionally excessive.

5 The bill requires law enforcement agencies to provide annual
6 reports to the department of revenue regarding forfeitures
7 completed by the law enforcement agencies. The bill requires
8 the department of revenue to prepare an annual report
9 aggregating the results and to post the aggregate report on the
10 department's internet site.

11 The bill provides that new Code chapter 809B preempts laws by
12 county, city, township, and other tribal and local governments
13 in the state which regulate civil and criminal forfeiture.

14 The bill makes conforming changes relating to the repeal of
15 Code chapter 809A and new Code chapter 809B.